

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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UNITED STATES OF AMERICA

P.O. Box 386, Washington, D.C. 20044

Plaintiff,

v.

Case No. **DKC 02 CV 2290**

U.S. HOME AND GARDEN, INC.,

655 Montgomery Street, Suite 830

San Francisco, California 94111;

EASY GARDENER, INC.

P.O. Box 21025, Waco, Texas 76702; and

WEED WIZARD ACQUISITION CORPORATION

655 Montgomery Street, Suite 500

San Francisco, California 94111

Defendants

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, United States of America, by its undersigned attorneys, alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a).
2. This Court has venue in this matter pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a).

NATURE OF THE CLAIM

3. Plaintiff, the United States of America, seeks civil penalties against the defendants, U.S. Home & Garden, Inc. ("USHG"), Easy Gardener, Inc. ("EGI"), and Weed Wizard Acquisition Corporation ("WWAC"), for knowingly failing to give the Consumer Product Safety Commission ("CPSC" or "the Commission") timely notice of defective products that could create substantial product hazards and of products posing an unreasonable risk of serious injury or death to consumers. Specifically, the United States seeks civil penalties because the defendants failed to report a hazardous defect and unreasonable risk of serious injury or death due to detaching metal chain links used on weed trimmer heads made and distributed by USHG, EGI and WWAC, even after these companies had been notified of dozens of serious injuries caused by the products.

DEFENDANTS

4. USHG is a Delaware corporation located at 655 Montgomery Street, Suite 830, San Francisco, California 94111. USHG transacts business in Maryland.

5. EGI is a Delaware corporation located at P.O. Box 21025, Waco, Texas 76702. EGI transacts business in Maryland. EGI is 100% owned by USHG.

6. WWAC is a Delaware corporation located at 655 Montgomery Street, Suite 500, San Francisco, California 94111. WWAC transacts business in Maryland. WWAC is a wholly owned subsidiary of EGI, which in turn is 100% owned by USHG.

CONSUMER PRODUCT SAFETY ACT, 15 U.S.C. § 2051 et. seq.

7. The CPSC is an independent federal agency that was created to protect the public against unreasonable risks of injury from consumer products. The Commission enforces the

Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2051 *et. seq.* The principal offices of the CPSC are at 4330 East West Highway, Bethesda, Maryland. 16 C.F.R. § 1000.4(a).

8. Under the CPSA, "[e]very manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product contains a defect which could create a substantial product hazard" must "immediately inform the Commission" of the defect unless the manufacturer, distributor, or retailer "has actual knowledge that the Commission has been adequately informed" of the defect. 15 U.S.C. § 2064(b)(2). The CPSA defines a "substantial product hazard" as a product defect that "creates a substantial risk of injury to the public." 15 U.S.C. § 2064(a)(2).

9. The CPSA also requires that "[e]very manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product creates an unreasonable risk of serious injury or death" to "immediately inform the Commission" of the risk unless the manufacturer, distributor, or retailer "has actual knowledge that the Commission has been adequately informed" of the risk. 15 U.S.C. § 2064(b)(3). Regulations promulgated pursuant to the CPSA define "serious injury" to include any significant injury, including fractures and other injuries necessitating medical or surgical treatment. 16 C.F.R. § 1115.6(c).

10. The CPSA regulations indicate that the requirement that reports be made "immediately" means "within 24 hours" after a company has obtained the requisite information regarding a defect or unreasonable risk. 16 C.F.R. § 1115.14(e). Because of this time limit, the regulations permit initial reports to be made by telephone to the CPSC's headquarters in

Bethesda, Maryland. 16 C.F.R. § 1115.13(b), (c) (providing the telephone number 301-504-0608). Reports may also be made in writing and sent to the agency's formal business address: Washington, DC 20207. Id.

11. The failure to furnish information required by 15 U.S.C. § 2064(b) is a prohibited act under the CPSA. 15 U.S.C. § 2068(a)(4).

12. Any person who knowingly fails to furnish such information may be punished by the assessment of civil penalties. 15 U.S.C. § 2069(a)(1).

THE FACTS

13. USHG describes itself as a leading manufacturer and marketer of a broad range of consumer lawn and garden products. Among its many products sold and distributed through April 2000 were Weed Wizard, which is plastic hub attachment containing chain links to be used on a weed trimmer, and Weed Wizard Replacement Chain Kit, containing replacement chain links without the plastic hub (collectively "Weed Wizard" or "the products").

14. The products were designed, marketed, and sold as replacements for string trimmer heads on any gas powered weed trimmer.

15. Weed Wizard was marketed and sold in packaging that stated "The Solution to Trimmer Line Problems" and "Fits 99% of All Gas Trimmers" and "Made in USA."

16. Weed Wizards were sold from May 1987 through April 2000 from between \$19 and \$25.

17. Weed Wizard Replacement Chain Kits were marketed and sold in packaging that stated "Fits All Models" and "Never Buy Line Again!"

18. Weed Wizard Replacement Chain Kits were sold from January 1992 through

April 2000 for about \$8.

19. The products were advertised on national television and sold in home centers, mass merchants, discount stores and hardware stores, including such stores located throughout Maryland.

20. The products were produced for sale to consumers for use in or around a household or residence.

21. The chain links of the Weed Wizard's trimmer metal chain can rapidly and unexpectedly detach during use, propelling the link into the air at a high velocity. If the metal link strikes the user or a bystander, it can penetrate skin and/or bone, causing serious injury or death.

22. The defect in Weed Wizard created a substantial product hazard.

23. The design of Weed Wizard created an unreasonable risk of serious injury or death to consumers.

24. On August 24, 1997, three year old Peyton Pytlewicz was critically injured when an chain link of a Weed Wizard being used by a family member detached, struck Peyton in the left temple, penetrated her skull and came to rest in her brain. After two days of intensive care and hospitalization, Peyton died from this injury. Peyton's parents sued Weed Wizard, Inc. ("WWI") for wrongful death.

25. On February 25, 1998, USHG and WWI, the then-manufacturer and distributor of the Weed Wizard, agreed to an Asset Purchase Agreement, whereby USHG purchased 100% of WWI and substantially all of its property and assets.

26. At all the relevant times, Robert Kassel and Richard Raleigh served as officers

and directors of USHG, officers and directors of EGI, and officers and directors of WWAC.

27. Prior to USHG's purchase of WWI, USHG became aware of serious injuries and at least one death which resulted from the Weed Wizard's detaching metal chain links. After conducting due diligence of WWI, EGI's Richard Grandy informed USHG's Chief Operating Officer Richard Raleigh that with respect to the Weed Wizard's "Product liability," the "Risks here seem high." In response to becoming aware of the Pytlewicz death caused by the Weed Wizard's detached metal link, USHG's Raleigh hired a testing laboratory, Meridian One Consulting Engineers, to evaluate and analyze potential product liability of the Weed Wizard.

28. In February 1998, Meridian One submitted its "Engineering Report on Weed Wizard Products" to counsel for USHG. The engineering report concluded, *inter alia*, that "[t]he Weed Wizard attachment(s) appears to have the potential to eject larger items, including itself if broken/disconnected. This is not necessarily consistent with user expectation." The engineering report also noted that "[m]ost of the common grass trimmers appear to be designed and sold for use with string-like or cord cutters. . . . The addition of a relatively hard and heavy replacement device significantly changes the hazards (e.g. the energy of, and type of projectiles emanating from a grass trimmer). This Weed Wizard attachment is not a replacement in kind, but a replacement in device type, with potentially new hazards. Much larger projectiles or broken/loose components from the Weed Wizard could be released." The engineering report concluded that "[t]he chain attachment was found to be aggressive, and its failure mode undesirable in terms of operator safety."

29. As part of the Asset Purchase Agreement, WWI informed USHG of eight lawsuits that had been filed against WWI due to injuries sustained because of Weed Wizard's detaching

metal chain links, and twelve settlements stemming from injuries sustained because of Weed Wizard's detaching metal chain links.

30. Subsequent to USHG's purchase on February 25, 1998, USHG, EGI and WWAC manufactured and distributed Weed Wizard products. More than 594,000 Weed Wizards were sold between the time of USHG's purchase of WWI and its voluntary recall of Weed Wizards which commenced on May 3, 2000.

31. On June 30, 1998, the Birmingham Electric Battery Company sent a letter to its dealers regarding the Weed Wizard. The letter stated, *inter alia*, that "[w]e have recently learned that there exists a possible hazard to the operator and/or any bystander in that the outer cutting link may disengage from the unit. The cutting link can become a projectile that has the possibility of causing injury or even death. We strongly encourage anyone who is selling this unit to pull them from their shelves and stop selling them." USHG, EGI and WWAC received a copy of this letter.

32. In August 1998, WWAC learned that the Queensland Government of Australia had previously banned the Weed Wizard metal chain product because it was unsafe. WWAC learned that in June 1992, the Queensland Minister of Employment, Training and Industrial Relations issued a Media Release informing the public that the government had "banned the sale of potentially-lethal weed cutter and [was] issuing a statewide alert to home gardeners." Pursuant to Workplace Health and Safety Regulations, the Government of Queensland issued a Prohibition Notice banning the sale of the Weed Wizard product because it was "likely to cause an immediate risk to the health and safety of any person."

33. In December 1998, A.A.B.B., Inc. (formerly WWI) settled the wrongful death

claim filed by the parents of Peyton Pytlewicz. Officers of USHG, EGI and WWAC became aware of this settlement.

34. Between USHG's purchase of WWI on February 25, 1998 and December 13, 1999, USHG, EGI and WWAC learned of at least five additional injuries sustained because of Weed Wizard's detaching metal chain links.

35. USHG, EGI and WWAC failed to report to the CPSC to notify it of these incidents or related injuries until after they received a specific inquiry from the CPSC.

36. Prior to being contacted by the CPSC about the Weed Wizard, USHG, EGI and WWAC knew about the reporting requirements of the CPSA.

37. In addition, USHG, EGI and WWAC failed to provide the Meridian One engineering report to the CPSC until December 8, 2000, more than 17 months after the CPSC first requested "[c]opies of all test reports, analyses, evaluations, and premarket tests" related to the Weed Wizard, and more than six months after agreeing to a voluntary recall of the Weed Wizard.

38. On June 18, 1999, the CPSC sent a letter to Jeff Mounce, then WWAC's Director of Operations, seeking information to determine whether a defect was present in the Weed Wizard product, and, if so, whether that defect rose to the level of a substantial product hazard under the CPSA. Specifically, the CPSC requested information called for by 16 C.F.R. § 1115.13(d)(1-14) as well as, *inter alia*, "[c]opies of all test reports, analyses, evaluations, and premarket tests related" to the Weed Wizard. In response to the CPSC's request, WWAC stated "[n]o admission of a defect is made by Weed Wizard with respect to its products." WWAC's response did provide information about nine lawsuits commenced in connection with

injuries sustained by persons using the Weed Wizard, and summaries of other claims that WWAC knew of. This report was delivered to the CPSC's offices in Bethesda, Maryland.

39. In or around August 1999, USHG shut down WWAC's operations in Dahlonega, Georgia and the production, sales and marketing of Weed Wizard products were transferred to USHG's Ampro Industries, Inc.'s ("Ampro") facility in Bradley, Michigan. WWAC identified Ampro as Weed Wizard's "exclusive distributor." Ampro is 100% owned by USHG.

40. On October 28, 1999, the CPSC informed WWAC that in order "to accurately assess the potential safety hazard, if any, associated with the Weed Wizard," additional information was necessary. Specifically, the CPSC requested information relating to product design changes, sales data, and whether WWAC had received any injury reports or complaints related to the Weed Wizard II with plastic blades. In its December 13, 1999 response, WWAC provided a time table tracking design and manufacturing changes in the Weed Wizard since 1987, and additional information with respect to the number of Weed Wizards sold. WWAC again asserted "no admission of a defect is made by the Company with respect to its products." This letter was delivered to the CPSC's offices in Bethesda, Maryland.

41. On February 9, 2000, after considering the evidence, the CPSC made a preliminary determination that the Weed Wizard presented a substantial hazard to users and asked that a recall of the defective products be commenced. In response to the CPSC notice, USHG, EGI and WWAC agreed to conduct a recall of the Weed Wizard. The CPSC and WWAC announced the beginning of this recall on May 3, 2000. The recall involved about 2.7 million Weed Wizard trimmer heads with metal chains and about 857,000 trimmer replace chain sets.

42. In conjunction with the May 2000 recall, the President and Chief Executive Officer of WWAC Robert Kassel wrote an "Important Safety Notice" to Weed Wizard customers alerting them to the recall and telling customers that "[y]ou should immediately stop using the Weed Wizards with metal chain links." At that time, Kassel also served as an officer and director of EGI, and an officer and director of USHG.

43. On July 28, 2000, USHG, EGI and WWAC revised its Weed Wizard Consumer Complaint Procedure. Under the new procedure, copies of a log maintained by the Product Safety Coordinator must be distributed to EGI's and USHG's "top management." The procedure states that "[t]he final authority for instructing counsel to report complaints to the CPSC is the responsibility of the CEO of US Home & Garden." The CEO is Robert Kassel.

44. In July 2001, USHG shut down Ampro's operations in Bradley, Michigan and Weed Wizard's sales and marketing activities were transferred to EGI's facility in Waco, Texas. Prior to this physical transfer of WWAC's remaining assets, EGI managers oversaw and were in charge of sales for WWAC. EGI managers reported to Richard Raleigh, who in turn reported to Robert Kassel.

COUNT I

45. Paragraphs 1-44 are incorporated by reference and realleged as if set forth fully herein.

46. Not later than February 25, 1998, USHG, EGI and WWAC had obtained information that reasonably supported the conclusion that the Weed Wizard contained a defect that could create a substantial product hazard, *i.e.*, a defect that could create a substantial risk of injury to the public.

47. Under 15 U.S.C. §§ 2064(b)(2), USHG, EGI and WWAC were required immediately to furnish the CPSC with the information it had obtained regarding defects that could create a substantial product hazard.

48. From the time it obtained the information regarding defects that could create a substantial product hazard, and continuing until at least December 13, 1999, when WWAC responded to the CPSC's request for information, USHG, EGI and WWAC knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with this information.

COUNT II

49. Paragraphs 1-44 are incorporated by reference and realleged as if set forth fully herein.

50. Not later than February 25, 1998, USHG, EGI and WWAC had obtained information that reasonably supported the conclusion that the Weed Wizard created an unreasonable risk of serious injury or death.

51. Under 15 U.S.C. § 2064(b)(3), USHG, EGI and WWAC were required immediately to furnish the CPSC with the information it had obtained regarding the unreasonable risk of serious injury or death.

52. From the time it obtained the information regarding the unreasonable risk of serious injury or death and continuing until at least December 13, 1999, when WWAC responded to the CPSC's request for information, USHG, EGI and WWAC knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with the required information.

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

I. Assess civil penalties against USHG, EGI and WWAC for the CPSA violations alleged in Counts I and II of this Complaint. 15 U.S.C. § 2069(a)(3).

II. Award plaintiff judgment for its costs and for such other and further relief that this Court deems just and proper.

Respectfully submitted,

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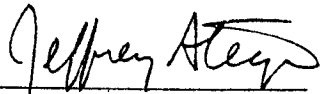
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Dated: July 10, 2002


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